

**REMARKS/ARGUMENTS**

1. In the above referenced Office Action, the Examiner rejected claims 1-3, 5-13, 15-21, 23-31 & 33-36 under 35 USC § 103 (a) as being unpatentable over Diefes (U.S. Patent No. 6,067,440) in view of Yu (U.S. Patent No. 5,561,456). In addition, the Examiner rejected claims 4, 14, 22 and 32, under 35 USC § 103 (a) as being unpatentable over Diefes (U.S. Patent No. 6,067,440) in view of Yu (U.S. Patent No. 5,561,456) and further in view of Russell (U.S. Patent No. 4,890,322).

Claims 1-36 are currently pending in the present application. The rejections referenced above have been traversed and, as such, the applicant respectfully requests reconsideration of the allowability of claims 1-36.

2. Claims 1-3, 5-13, 15-21, 23-31 & 33-36 were rejected under 35 USC § 103 (a) as being unpatentable over Diefes (U.S. Patent No. 6,067,440) in view of Yu (U.S. Patent No. 5,561,456). The motivation for this combination was stated as follows:

"It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Diefes with the technology of detecting streams transmission capability, for the desirable improvement of more efficiently controlling the distribution system, according to the teachings of Yu."

Applicant respectfully disagrees. In particular, Diefes discloses a system that broadcasts each channel from a head end to a converter box. When a subscriber attempts to change the channel to a channel (such as HBO), that the subscriber has not paid for, the transmission stream to the converter box is interrupted. (See e.g. Col. 4, lines 45 - 65, and Col. 7, lines 29-39). Diefes does not need the system of Yu to queue requests of multimedia content or to monitor the available capacity. In Diefes, the multimedia content is already broadcast to the subscriber's converter box. For this reason, Applicant believes that the combination of Diefes and Yu is improper.

Applicant thus believes that claims 1, 12, 19 and 30, and claims 2-11, 13-18, 20-29, and 31-36 that depend therefrom, are patentably distinct from the prior art.

3. Claims 12 and 30 were rejected based on the combination of Diefes and Yu. In presenting these rejections, the Examiner did not expressly address the language of claims 12 and 30 that recites, "allocate best match resources of the sufficient resources to fulfill the client request." Indeed, Diefes does not address, nor does it have a need, to disclose resource allocation as discussed above. Yu seems to imply that sufficient resources can be allocated without regard to determining a best match. Indeed, it is unclear to Applicant how the disclosure of Yu can be read upon this particular language of Claims 12 and 30.

While applicant believes that the combination of Diefes and Yu is improper as discussed above, for this independent reason, Applicant believes that claims 12 and 30, and claims 13-18 and 31-36 that depend therefrom are patentably distinct from the prior art.

4. Claims 3 and 21 were also rejected based on the combination of Diefes and Yu. In particular, the examiner cites Diefes as disclosing the "parental control" feature of claims 3 and 24. Applicant respectfully disagrees. As stated above, Diefes discloses a system that interrupts the transmission of a channel that the subscriber has not paid for. In the system of Diefes, if a subscriber signed up for a channel that contained adult content, anyone with access to Diefes' converter box could access that content.

Claims 3 and 21 each recite "determining whether the video program exceeds a parental control setting for one of a plurality of clients". Diefes does not disclose, suggest or teach such an apparatus or method.

While applicant believes that the combination of Diefes and Yu is improper as discussed above, for this independent reason, Applicant believes that claims 3 and 21 are patentably distinct from the prior art.

5. Claims 5, 15, 23 and 33 were also rejected under the combination of Diefes and Yu. In particular, the Examiner cites Yu as disclosing features of claims 5, 15, 23 and 33 of "determining whether a tuning module has a capacity to

accommodate a client request". Applicant respectfully disagrees. The portion of Yu cited by the examiner states,

Then, in step 506 the scheduler determines if there is any stream capacity available on the server. If there is no capacity available to service the request, the scheduler exits in step 508. At this point the request can not be scheduled until a currently running video completes and its associated stream capacity is freed. If the server has a stream capacity available, the scheduler [sic] invokes the video stream scheduling task of FIG. 4.

Yu does not disclose determining whether a tuning module has a capacity to accommodate a client request. Indeed, Yu does not disclose a tuning module or tuner at all.

While applicant believes that the combination of Diefes and Yu is improper as discussed above, for this independent reason, Applicant believes that claims 5, 15, 23 and 33 are patentably distinct from the prior art.

6. Claims 6 and 24 were also rejected based on the combination of Diefes and Yu. In particular, the Examiner cites Yu as "querying one of the plurality of clients to select alternative multimedia service". Examiners states the following explanation:

Yu teaches that the scheduler can inform the user of an estimated wait time for a particular movie. Viewers in Yu have the option of joining a H-queue, i.e., 'hot list' or C-queue, i.e. cold-list.

Applicant respectfully disagrees. First of all, the H-queue and the C-queue are not alternative multimedia services. These are separate holding queues of the same multimedia service that are designed to allow subscriber requests for the same movie to be aggregated. Secondly, it is the scheduler of Yu's system that determines if the customer request goes in the H-queue or the C-queue, not the subscriber. (see col. 5, lines 51-61).

Yu's system simply does not query one of the plurality of clients to select an alternative multimedia service, as set forth in claims 6 and 24. While applicant believes that the combination of Diefes and Yu is improper as discussed above, for this independent reason, Applicant believes that claims 6 and 24 are patentably distinct from the prior art.

7. Claims 17 and 35 were rejected based, in part, on Official Notice that "it was well known in the art to have a list of components". Applicant respectfully traverses this Official Notice and requests that documentary prior art be produced. In particular, Applicant makes this request so that any new prior art reference produced by the examiner can be reviewed in light of the context and features of Applicant's invention and the particular motivation that Examiner believes is present to combine this potential new reference with other references that may be cited.

For the foregoing reasons, the applicant believes that claims 1-36 are in condition for allowance and respectfully request that they be passed to allowance.

The Examiner is invited to contact the undersigned by telephone or facsimile if the Examiner believes that such a communication would advance the prosecution of the present invention.

Accompanying this Response is a Petition for a two-month extension of time, together with the appropriate payment for such. The Commissioner is also authorized to charge any additional fees that are required or credit any overpayment to Deposit Account No. 50-1835 (VIXS 008).

RESPECTFULLY SUBMITTED,

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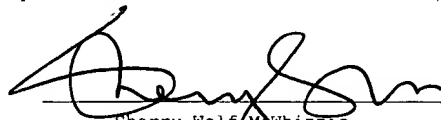
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Sherry Wolf McWhinnie